



## **Appendix C**

# **STATEMENT OF WORK (SOW)**

**For**

## **Comprehensive Web Development for New Generation System (NGS)**

**#701-16-028**

**May 23, 2016**

### **TEXAS EDUCATION AGENCY**

William B. Travis Building  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Names, prices and other response details will only be divulged after award of a contract, if a contract is awarded. The award notice will be posted to the Electronic State Business Daily at <http://esbd.cpa.state.tx.us>. Respondent understands and agrees that no public disclosures or news releases pertaining to this SOW, subsequent award, or any results or findings based on information provided or obtained to fulfill requirements of this SOW shall be made without prior written approval of TEA.

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- A - Suggested Format for Response Cover Page
- B - Execution of Offer, Contract Terms and Conditions, Affirmation and Proposal Preferences
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- D - Access to Confidential Information

**Appendix C**  
**Statement of Work (SOW) for**  
**Comprehensive Web Development for New Generation System (NGS)**

**1. INTRODUCTION**

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It is the intent of the Texas Education Agency (TEA) to solicit proposals to provide Comprehensive Web Development for the New Generation System (NGS) in accordance with all requirements stated herein. The New Generation System (NGS) is a web-based interstate information network that communicates demographic, educational and health data on migrant children to educators throughout the nation.

The NGS database captures educational and health data on migrant children. The system allows educators to record the movement of migrant students through the educational process by producing on-line records of a student's educational progress and health profile. Educators can generate a student transfer document to facilitate academic placement as the student transfers schools. NGS also allows educators to generate various student-level, management and federal performance reports. Student data is uploaded electronically daily from NGS into the national Migrant Education Program (MEP) student record system, the Migrant Student Information Exchange (MSIX), operated by the U.S. Department of Education (USDE).

Vendors must be knowledgeable of the Migrant Education Program and the TEA NGS Data Management Requirements.

**2. BACKGROUND**

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The establishment of the New Generation System (NGS) began with a vision of what such a system should do for teachers, health providers, counselors, families, and administrators in creating an optimum educational environment for migrant students. NGS addresses the immediate need of record/text data transfer, yet addresses the need to communicate relevant and authentic information on students in an efficient and real-time manner.

The mission of NGS is to create a database that collects, stores, communicates, and transfers migrant student demographic, education, and health information. The objective of the NGS system is to continue improving the design of the system using existing and future technologies that collect, store/maintain, communicate, and present education and health information on migratory children.

The NGS group involves several stakeholders that include a NGS Management Team, a NGS Advisory Committee, and the NGS Staff. The Development Team selected as a result of this SOW will be guided by the direction of the Texas Education Agency (TEA) MEP staff, the NGS Management Team and the NGS Advisory Committee.

The NGS Management Team is comprised of state directors of Migrant Education. The NGS Management Team governs the policies, size, and scope of NGS activities, taking into account input from the NGS Advisory Committee and NGS consortium states. This includes priorities for design, development, implementation and evaluation. Members of the Management Team advocate for the NGS and prepare the marketing strategies, provide direction to the fiscal agent to ensure that the financial requirements are met, and participation standards are set. The Management Team Chairpersons work with NGS managers to review progress of work, identify needs, and ensure communication with consortium members and the Advisory Committee.

The NGS Advisory Committee has membership from state, regional, and local levels. The Advisory Committee acts within the parameters of a plan including size, scope and priorities approved by the Management Team. The NGS Advisory Committee's major role is to communicate the program design, development and implementation needs of consortium states to the NGS Management Team. This includes, for example, technical assistance regarding the programmatic content of the system. Advisory Committee members provide recommendations to the Management Team as to the services to be offered through NGS, including technical assistance and training for member states. The Committee receives input from different perspectives, such as instructional staff, paraprofessionals, technicians, NGS users, administrators, parents, students, and the community. The principle objective is to respond to user needs. Additionally, the advisory committee reviews emerging technologies to maintain the state-of-the-art system.

### 3. SCOPE OF WORK

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#### 3.1 Management Services

##### 3.1.A. Description of Services

TEA provides the following as a high-level description of the services required. This SOW describes the duties and responsibilities between the Contractor and the Texas Education Agency (TEA) related to project management and website maintenance to TEA and the New Generation System (NGS). The Contract shall be between TEA and the Contractor. Any, and all services provided by Contractor directly to NGS shall be through the direction of TEA.

Selection of the Vendor includes an evaluation of the Vendor's approach and methodology for performing the services described below

##### 3.1.B. Project Stipulations

Contractor must:

- 1) Have in place the technical and management ability to oversee an established educational student record transfer and reporting data system
- 2) Demonstrate significant experience in working with educational entities and student data systems
- 3) Have the technical programming expertise in place to respond in a flexible manner to the changing needs of state education agencies and their sub-grantees with regard to Federal reporting and the maintenance of the current data system
- 4) Communicate well with the Lead state, Texas, and its Consortium of States in face to face, written and telephonic correspondence with frequency and regularity
- 5) Provide the necessary privacy assurances to Texas and the Consortium of States
- 6) Have an established record of accomplishment of dealing with educational entities at the State, regional and local levels and working with divergent stakeholders and end users of the system
- 7) Demonstrate knowledge and understanding of the Migrant Education Program and the TEA NGS Data Management Requirements

##### 3.1.C. Project Management

Contractor will provide a named point-of-contact at the time of Contract award for the purposes and terms of the Contract for Project Management. Project Management will provide the following services to TEA:

- 1) Oversee the NGS website maintenance, database management and system maintenance services provided by Contractor on the NGS Project provided to TEA facility NGS offices located in Austin, Texas
- 2) Conduct bi-monthly meetings, as needed, with TEA Migrant staff and NGS staff
- 3) Capture and document each new requested website modification also known as build items for each website update or build release documented in a spreadsheet managed by Contractor. New website modification requests are managed by Contractor and approved by TEA
- 4) Coordinate in advance with TEA and NGS staff to obtain prior approval before deploying each build release
- 5) Ensure all staff have a clear understanding of the Migrant Education Program and the TEA NGS Data Management Requirements

### 3.1.D. Website Maintenance

Contractor will provide the services of a minimum of two Developers for the purposes and terms of the Contract for website maintenance and they must be knowledgeable of the Migrant Education Program and the TEA NGS Data Management Requirements. The Developers will provide the following services to TEA:

- 1) Participate in and conduct website design sessions with NGS staff twice a year at the NGS Advisory Committee Meeting
  - a. Prepare materials needed for the meetings, including providing a laptop and data projector
  - b. Capture minutes during the meetings; share draft minutes with the committee members for feedback and post final minutes on NGS database
- 2) Maintain the State Assessment Data import for all NGS Consortium States
  - a. Integrate state assessment data into the NGS database for Texas and the Consortium of States
  - b. Address any issues relevant to the upload of the state assessment data
- 3) Maintain the Education Data Exchange Network (EDEN) export
- 4) Maintain the Health and Human Services Commission (HHSC) file exchanges
- 5) Maintain the Migrant Student Information Exchange (MSIX) file transfers
- 6) Maintain all Performance Reports
- 7) Maintain the Electronic Data Interchange (EDI) Service
- 8) Maintain the Report Processing Service
- 9) Maintain Change Detection Software
- 10) Maintain Automatic User Deactivation Process
- 11) Maintain the NGS Database and as identified by TEA and the NGS Consortium maintain new build items to include Level of Effort (LOE)
- 12) Maintain the NGS System Environments
- 13) Produce Eligibility Sample Reports
- 14) Maintain the NGS Help Screens
- 15) Provide monthly status reports
- 16) Research Requested Enhancements
- 17) Research errors and/or NGS build item change requests to determine the following:
  - a. Validity of error and/or NGS functional change request
  - b. LOE to correct error or implement NGS functional change request
  - c. Create or finalize NGS Change Request document
  - d. Submit NGS Change Request document to TEA Project Management for approvals
  - e. Implement approved NGS Change Request(s)
  - f. Update NGS Change Request(s) documentation
- 18) Provide support for the NGS Help Desk to include the following:
  - a. Field requests from the NGS Help Desk staff for NGS issue resolution
  - b. Field requests from the NGS Help Desk staff for Custom Reports
  - c. Address on-going relevant issues concerning the support of the NGS Help Desk
- 19) Address on-going relevant issues concerning the support of the NGS system/database

### **3.1.E. System Maintenance Services and Administration Support for Maintenance/Development Environment**

Support the maintenance/development environment (Development Web, Development Database, Test Web, Test Database, Workstations and Report Processing Services) as follows:

- 1) Manage and maintain maintenance tools provided in the Microsoft Developer Network (MSDN) software support package
- 2) Plan and manage deployment of new build items to the production environment
- 3) Provide recommendations for hardware and software purchases
- 4) Test new hardware and third party software prior to implementation
- 5) Provide second tier technical assistance for problem resolution
- 6) Perform monthly system administration duties of the maintenance/development environment:
  - a. Perform monthly backups of the NGS maintenance/development environment
  - b. Verify all windows updates are current
  - c. Verify the virus scan data files are current
  - d. Review the web error log as part of the monthly system administrative duties

### **3.1.F. Other Services and Conditions**

- 1) The Contractor's NGS Project Team, at a minimum consisting of the Project Manager, System Administrator, and two Programmers, in coordination with the TEA, the NGS Advisory Committee and the NGS Management Team will establish the specific deliverable items, the deliverable priorities and determine which deliverables will be presented as a website release. Website releases will be coded and implemented twice per calendar year. Release 1 delivered sometime during January 1 and June 30 of the current Contract year. Release 2 delivered sometime during July 1 through December 31 of the current Contract year. Actual implementation dates will be negotiated and approved by all parties. The following deliverable stipulations apply:
  - a. The deliverable priorities will be fully implemented approximately one month after delivery of each release or two weeks after the NGS Management and/or NGS Advisory Committee meetings that establish the new build items and priority
  - b. NGS Management Team can request a change of priorities and substitute build items with written approval from Contractor
  - c. TEA and Contractor will sign off on the detailed list of new build items and priorities prior to development of each build release
  - d. The delivery dates for each release are based upon the agreed upon specific items for each release. If any delays are projected due to changes in the specific items, then a new delivery date will be proposed and agreed upon by TEA and Contractor
  - e. Contractor shall provide any, and all new build items hereunder to the NGS testing group for system testing on the test server. The new build items will be made available to the NGS testing group as soon as they have been completed and tested by the Contractor's development and testing staff
  - f. As the NGS, testing group tests the new build items they will notify the contractor's development and testing staff, in writing, of any suggestions, changes, or modifications to the new build items. Contractor will implement changes if approved by the Contractor's development and testing staff, and not increase the scope of work. If these changes require an increase in the scope of work, TEA will allow Contractor sufficient time to implement the change(s) or agree to have these changes implemented during a subsequent release

- g. TEA will notify Contractor, in writing, within fifteen working days following the release of a new build item if an item is not acceptable for full-scale general usage. The notice will specify in reasonable detail the reasons the deliverable is unacceptable. If TEA does not notify Contractor within fifteen working days following delivery, the deliverable has been deemed accepted by TEA
  - h. All NGS data, in all servers, is the property of the Texas Education Agency, along with the NGS Consortium of States. In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all associated documentation created to support TEA and the NGS Consortium of States in whatever form that they exist
  - i. It is the responsibility of Contractor to provide a point of contact to assist the site security monitoring company, building security/management and the Austin Police Department for issues that arise regarding the NGS office physical security
  - j. It is the responsibility of the Contractor to ensure that the office space is reasonably neat in appearance and well maintained
  - k. Contractor shall permit TEA access during normal business operating hours to all records, data and facilities used in performance of the contracted services provided TEA does not cause any delay or disruption in the day to day operations
  - l. Contractor must ensure the NGS Project Team (NGS staff) are knowledgeable of the Migrant Education Program, including the TEA NGS Data Management Requirements.
  - m. Contractor will complete any other duties within the scope of the SOW as requested by TEA.
- 2) If the TEA or the NGS Management Team want to increase the LOE contained in the Contract, including Change Requests, Contractor will present a Change Request in an estimate for approval and sign off prior to starting development. An increase in the LOE for functionality additions performed without substituting for functionality previously on the new build item list can result in additional financial charges for the requested increase in LOE.
- 3) TEA's Responsibilities – Office Space, Equipment, and Security
- a. TEA and/or the NGS Consortium of States will provide for the physical security of the NGS office and equipment room
  - b. TEA and/or the NGS Consortium of States will supply office and equipment room monitoring service
  - c. TEA and/or the NGS Consortium of States are responsible for the site security licenses filed with the Austin Police Department
  - d. TEA and/or the NGS Consortium of States are responsible for all insurance requirements for the NGS Office, property, and equipment
  - e. TEA and/or the NGS Consortium of States will provide reasonable and acceptable office space for up to four team members in addition to PC workstations, production servers (to include test, train and development), production software and printers
  - f. TEA and/or the NGS Consortium of States will be financially responsible for all equipment purchases, internet service and upgrades required to maintain the proper operational environments for NGS
  - g. TEA and/or the NGS Consortium of States is financially responsible for all software licenses, server certificates, domain registration and the renewal of such for the proper legal operation of the NGS environments
  - h. TEA and/or the NGS Consortium of States will provide for a production system environment to include adequate cooling, ventilation, fire prevention, and offsite backup storage in the event of an emergency

4) Materials and Labor

TEA and/or NGS Consortium of States shall furnish all supplies and/or equipment to perform the requirements as specified under the Contract. Contractor shall use proper materials in accordance with the manufacturer's maintenance directions and instructions. TEA or the NGS Consortium of States shall furnish all hardware upgrades as recommended, and justified by Contractor and agreed upon by the NGS Management Team to maintain the development and production-operating environment. The Contractor is not required to furnish any equipment or tools in order to perform the contract except the following:

- a. General office supplies such as paper, pens, pencils, markers, notepads, etc.
- b. Parking for Contractor's staff
- c. Monthly telephone bill for two business phone lines and one fax line
- d. Water and other provisions for Contractor's staff

Contractor is not responsible for the damages caused or expenses incurred due to hardware problems or third party software problems, fixing hardware problems or additional equipment needed to expand services. Contractor will assist with resolution of third party software problems as far as the Vendor maintenance agreements allow. Contractor must warrant that any of Contractor's custom developed or proprietary product, licensed or provided, to NGS (including all modifications and upgrades) will not infringe upon or violate any United States patent, copyright, trade secret or any other proprietary right of any third party or contain the confidential information of any third party without proper authorization from the third party.

5) Project Managers

Contractor and TEA shall each designate a Project Manager. The Contractor's Project Manager, working with the TEA Project Manager or TEA Project Manager Counterpart, shall be responsible for all work specified in the Contract. Contractor shall supply a Project Manager for all requirements of the Contract and ensure the Project Manager is knowledgeable of the Migrant Education Program and TEA NGS Data Management Requirements. The Project Managers will oversee all work performed on this project and will be the primary points-of-contact for matters relating to the Contract. TEA shall have the right to approve/disapprove the Contractor's Project Manager. Contractor shall not remove their Project Manager during the term of this Contract without written notice to TEA thirty days in advance or as soon as commercially feasible; however, TEA reserves the right to request the removal of a Project Manager at any time during the Contract period.

## 4. ADDITIONAL TEA TERMS AND CONDITONS

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### 4.1 Transition Period

In the event any subsequent Contract is awarded to a new Vendor, the awarded Vendor will provide to the new Vendor the issues database as well as items outlined in the following Transition Period paragraph to enable the new Vendor to continue the maintenance of services

Upon termination of this Contract, either *by the Vendor*, by cause, by non-appropriation of funds, or natural expiration, both the Vendor and TEA agree that a four-week transition period may occur. The Vendor will present weekly updates of the Vendor personnel. TEA may formalize this transition period in a separate Contract, if Contract terminated or when it naturally expires. Period will cover:

- a. The new Vendor/assigned Vendor personnel and their full-time training of TEA staff, or designees, on the system's design, maintenance and upgrades, including system architecture, system standards and components, processing functions, documentation and code.
- b. Training on the procedures and methods to modify the system.
- c. General facilitation and coordination with TEA staff, or designees, on the transfer of system maintenance.

The term of any Contract resulting from this SOW shall be from Contract award through August 31, 2016. TEA, at its own discretion, may extend any Contract awarded pursuant to this SOW for up to four additional fiscal years under the terms subject to appropriation of funds by the United States Department of Education (USDE) and dependent on the Vendor's active Comprehensive Web Development and Management Services Contract with the Department of Information Resources (DIR).

If a Contract awarded is to a new Vendor rather than to the current Vendor, then a transition period will be required at the beginning of the Contract at no additional cost to TEA. This is necessary to ensure a smooth transition from the current Vendor supporting the NGS Management Services and Help Desk Support to the new Vendor.

#### **4.2 Family Educational Rights and Privacy Act (FERPA)**

FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under applicable programs of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children's education records. The rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students." FERPA outlines the circumstances in which schools are required to have written permission from a parent or eligible student in order to release information from a student's education record.

### **5. INVOICES**

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The Contractor shall submit an invoice specifying the task worked on, as specified in *Section 3 'Scope of Work'*. Send invoices to TEA Accounts Payable, address below or preferably emailed to [TEAAccountsPayable@tea.texas.gov](mailto:TEAAccountsPayable@tea.texas.gov).

Texas Education Agency  
Accounts Payable Office, Rm. 2-130  
1701 North Congress Avenue  
Austin, TX 78701-1494

### **6. VENDOR RESPONSE**

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#### **6.1 Conflict of Interest**

A Vendor will not be selected if there is a conflict of interest that will or may arise during the performance of its obligations under the Contract. For this reason, Vendor's response to SOW must disclose any existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to the submission of a proposal from Vendor and its proposed subcontractors', possible selection as Successful Vendor, or its performance of the Contract.

As part of this disclosure requirement, Vendors must include in its proposal all past and present contractual, business, financial or personal relationships between Vendor and TEA and between Vendor's proposed subcontractors, if any, and TEA. For purposes of this disclosure requirement, (i) "past" is defined as within the two (2) calendar years prior to the deadline for submission of proposals in response to this SOW; (ii) TEA is defined as the statewide elected official who heads the agency as well as the agency's employees or recent former employees; and (iii) "recent former employees" are defined as those TEA employees who have terminated agency employment within the two (2) calendar years prior to the deadline for submission of proposals in response to this SOW. For each item, Vendor must provide a detailed explanation of why Vendor does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue relative to Vendor's submission of a proposal, possible selection as awarded Contractor or its performance of the Contract.

For purposes of this SOW, "personal relationship" is defined as a current or past connection other than a clearly contractual, business, financial, or similar relationship and includes family relationships or other connections outside simply providing a response to this SOW. For this purpose, "family relationship" means a relationship within the third degree of consanguinity or second degree of affinity (see Chapter 573 of the Texas Government Code) which defines these degrees of consanguinity and affinity.

Connections other than such family relationships fall within this definition and must be disclosed if a reasonable person could expect the connection to diminish Vendor's independence of judgment or effectiveness in the performance of Vendor's responsibilities to TEA or the State under the Contract. Connections also fall within this definition if a reasonable person could expect the connection, within the overall context of Vendor's submission of a proposal, possible selection as awarded Contractor, or its performance of the Contract, to create an issue for the agency's consideration relative to a potential appearance of impropriety or conflict of interest.

Vendor certifies compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with executive head of a state agency. If Section 669.003 applies, Vendor will complete the following information in order for the proposal evaluation: Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position with Bidder; and Date of Employment with Bidder.

If the circumstances certified by Vendor change or additional information are obtained subsequent to submission of responses, by submitting a proposal Vendor agrees that it is under a continuing duty to supplement its response under this provision and that the duty to disclosure of any conflicts of interest is an ongoing obligation throughout the term of the contract. Vendor shall submit updated information as soon as reasonably possible upon learning of any change to their affirmation

## 6.2 Response Format and Content

Responses must be typed on 8 ½" x 11" white paper and be limited to one hundred (100) pages, not including appendices and attachments. Responses shall include a "Table of Contents" and give page numbers for each part of the response. Submit responses in a manner that does not carry any benefit, keepsake, or value for members of the review panel.

## 6.3 Response Cover Page

Responses should include a cover page that clearly states the name of the firm or organization and the name, position, and telephone number of the Vendor's project administrator whom TEA may contact regarding the response, Attachment A.

## 6.4 Response Checklist

The checklist is to assist Vendors in ensuring that all information is included in their response. Vendors must refer to the appropriate section of the SOW for detailed information on the following.

- |                          |   |                        |
|--------------------------|---|------------------------|
| <input type="checkbox"/> | Response Cover Page                               | Sec. 7.3, Attachment A |
| <input type="checkbox"/> | Execution of Offer, Contract Terms and Conditions | Attachment B           |
| <input type="checkbox"/> | Understanding of the Project and Methodology      | Sec. 8.1               |
| <input type="checkbox"/> | Subcontracts                                      | Sec. 8.2               |
| <input type="checkbox"/> | Personnel Resources                               | Sec. 8.3               |
| <input type="checkbox"/> | References – Past Performance                     | Sec. 8.4               |
| <input type="checkbox"/> | Access to Confidential Information                | Sec. 8.5 Attachment D  |
| <input type="checkbox"/> | Pricing Proposal                                  | Sec. 9, Attachment C   |

**Failure to return all information on the checklist may disqualify the response.**

## 7. SOW RESPONSE FORMAT AND CONTENT

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### 7.1 Understanding of the Project and Methodology

The response must communicate an understanding in the areas of the project, including knowledge of the Migrant Education Program and the TEA NGS Data Management Requirements, describe the tasks, and identify potential problems in the conduct of the project and methods to identify and solve such problems. Vendor must describe the methodology for carrying out the objectives and requirements of the project. The response must describe the project activities, materials, and other products, services, and reports generated during the Contract period and relate them to the stated purposes and specifications described in the SOW. Vendor must append technical evidence relating to the Vendor's ability to perform the proposed services to the response. This evidence shall provide TEA with examples of how the Vendor's staff proposed for the Contract provided similar services on past engagements and how they will utilize that experience to perform the requirements of the SOW. Failure to meet these conditions shall result in disqualification of the response and shall receive no further consideration.

### 7.2 Subcontracts

Vendor must identify key partnerships and subcontractors it intends to leverage for this project, and specify the tasks and activities and the level of responsibility each will have with the project. The Vendor must identify any subcontractors proposed to work on the project who are Historically Underutilized Businesses (HUBs) as defined in [V.T.C.A., TX Govt. Code, §2161.001](#)

If the HUB Subcontracting Plan (HSP) submitted to DIR has changed, Vendor must submit a new HSP with the response. The awarded Vendor will submit a Progress Assessment Report (PAR) monthly verifying compliance with the HSP, including the use of and expenditures made to its subcontractors (HUB and Non-HUBs). Submission of the PAR is a condition for payment. The selected Contractor shall also report all 2<sup>nd</sup> and 3<sup>rd</sup> Tier subcontracting in the monthly PAR. PAR's are due no later than the 10<sup>th</sup> day of the following month. Vendors submit the required PAR monthly, even if no activity occurred for the month, electronically to the [HUBOffice@tea.texas.gov](mailto:HUBOffice@tea.texas.gov).

### 7.3 Personnel Resources

An appendix to the response must contain résumés of project staff members. If the résumés include references, TEA will not consider the references in the review. Names given as references must not affect the scoring of the proposal in any way. In addition, the Vendor cannot list employees of TEA in the response as references. The Vendor may list TEA employees in a memo transmitting the response, but not in the response. If the Vendor plans to use external consultants or subcontractors, a staff organization and résumés of consultants and/or subcontractors must be included.

Vendor must provide the following information for each of the skill sets identified:

- a. Position title
- b. Job description for the position
- c. Description of the minimum education, certification, and skill set and experience levels required for the position
- d. Estimated number of staff in the position

Vendor must provide the following information on all personnel services:

- a. Description of each individual's experience
- b. Documentation of education and certification(s)
- c. Specific information on years of experience with software and roles/responsibilities with projects of similar nature in complexity, including roles/responsibilities on those projects
- d. Specific information concerning roles/responsibilities, on the required reference projects
- e. Proposed roles and responsibilities on the project

#### 7.4 References – Past Performances

Vendor must provide at least two applicable project experiences within the past three years similar in size, scope, and complexity to the one described in this SOW. Vendor must describe the nature of each engagement and include at least two customer reference contacts per project, including current contact information. TEA may give Pre-K thru 12 Education and public sector references additional consideration.

For each reference provided, the Vendor must list the following:

- a. Vendor name, Point of contact with current telephone number and email address
- b. Industry/ subject focus, project description
- c. Total contract value
- d. Key technologies employed (hardware and software tools)
- e. Date the system was placed in production

TEA will contact references to verify past performance in the following areas:

- a. Quality of deliverables and methodology
- b. Timeliness/adherence to schedule and budget
- c. Business conduct
- d. Innovation
- e. Problem resolution and customer satisfaction

#### 7.5 Access to Confidential Information

During the execution of a Contract, TEA will expose the Vendor to confidential student information and proprietary software and documentation under license to TEA. The Vendor shall read and sign the confidentiality statement acknowledging the confidentiality requirements of this SOW.

### 8. PRICING

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The Pricing Proposal, Attachment C, must be submitted separately from the SOW and include a detailed budget for each fiscal year through August 31, 2020. Vendors must list in their pricing proposals all assumptions used to compile the prices given for the project. TEA reserves the right to award to one or more Vendors; as a result, of this SOW. Failure to meet these conditions shall result in disqualification of response and shall receive no further consideration

### 9. RESPONSE SUBMISSION REQUIREMENTS

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#### 9.1 Response Submission, Date and Time

Without exception, response must be time/date stamped by the TEA Purchasing, Contracts and Agency Services (PCAS) Division before:

**2:00 PM, CT, Friday, June 10, 2016**

TEA's PCAS Division is open Monday through Friday, 8:00 a.m. to 5:00 p.m., Central Time, excluding State of Texas-observed holidays. TEA will not consider responses that PCAS receives after 2:00 p.m. (Central Time) on the closing date. The mailing address is:

Purchasing, Contracts and Agency Services Division, Room 2-125  
Texas Education Agency  
William B. Travis Building  
1701 N. Congress Ave.  
Austin, TX 78701-1494

The Vendor must submit responses in a sealed envelope or box with the Vendor's name, SOW number, and closing date prominently visible on the envelope/package. TEA will not accept facsimile transmissions of responses under any circumstances. Discovery of any false statement in the response is a material breach and shall void the submitted response or any resulting contracts, and Vendor may be removed from all vendor lists maintained by the State of Texas. Regardless of the method of submitting the response—United States Postal Service (USPS), United Parcel Service, Federal Express or other delivery service, the response must be received in the TEA's PCAS Division by 2:00 PM on or before the closing date in order to be considered.

Note: TEA WILL NOT accept a USPS postmark and/or round validation stamp; mail receipt with the date of mailing stamped by the USPS; a dated shipping label, invoice or receipt from a commercial carrier; or any other documentation as proof of receipt of any response. Vendors are advised that TEA assumes no responsibility, due to any circumstances, for the receipt of a response after the deadline time and date established in this SOW.

## 9.2 Number of Response Copies

The Vendor must submit six hardcopies of the response by 2:00 p.m. on the deadline date. Failure to meet the condition shall result in disqualification of response. Photocopying is not available at TEA. PCAS Division will not accept additions/replacements to the response after the closing date.

## 9.3 Tentative Sequence of Events/Critical Dates

Date	Event
Monday, May 23, 2016	Distribution of SOW to DIR Vendors
May 23 – June 1, 2016	Open period for questions
Wednesday, June 1, 2016	Deadline for questions to TEA
Thursday, June 2, 2016	Addendum issued for responses to questions
Friday, June 10, 2016	Response is due in the PCAS office by 2:00 p.m., CT
June 10 – 17, 2016	Response review, Evaluations, and Selection of Vendor
Contract Award	Beginning date of contract and commencement of work
August 31, 2016	Ending date of Contract, final billing submitted to TEA

*It should be noted that all of these dates except the response due date might vary slightly as conditions require*

## 9.4 Questions and Response for Additional Information

In order to assure that no prospective Vendor may obtain a competitive advantage because of acquisition of information unknown to other prospective Vendors, TEA will provide any additional information that is different from or in addition to, information provided in the SOW only in response to written inquiries. TEA will provide answers to all such inquiries via email and send to the DIR Vendors identified for this solicitation. Vendors must make all inquiries for information in writing (email or fax) to the Attention: Debra Rosas, [TEAContracts@tea.texas.gov](mailto:TEAContracts@tea.texas.gov) or to fax number (512) 475-1706.

## 9.5 Standard Response Requirements

TEA may consider responses that address only part only part of the requirements contained in this SOW as non-responsive. TEA reserves the right to reject any and/or all responses and to negotiate portions thereof. TEA may not necessarily fund the selected responses for the full response price if the Agency determines that a different price is more appropriate. The budget submitted by the Vendor is subject to negotiation by the Texas Education Agency.

TEA reserves the right to select the response containing the best proposal considering the outcomes desired. The Vendor shall furnish such additional information that the Agency may reasonably require. Vendor must work with the Agency staff to clarify the design of the materials, project design, project activities, and/or other products, and modify these items if necessary

**9.6 State Not Responsible For Preparation Costs**

TEA will not be liable for costs incurred in the preparation and submittal of a response.

**9.7 Disclosure of Response Content**

After Contract award, responses are subject to release under the Texas Government Code, Chapter 552, Public Information Act. Vendors must indicate on their response cover if their submission contains proprietary information.

**9.8 Review of Responses**

Review of responses will begin as soon as practical after receipt. TEA may ask the Vendors receiving the most favorable ratings during the first round of selection to send a representative to Austin, Texas, for finalist presentations. TEA will rate the responses again following oral presentations.

TEA will notify each Vendor in writing of the selection or non-selection for award. TEA will destroy additional copies of responses not selected for award in accordance with the TEA-approved records retention policy. In the case of a response selected for award, notification to the Vendor will include the contractual conditions that the Vendor must accept in accordance with federal and/or state law. TEA will select responses based on the ability of each Vendor to carry out all of the requirements contained in this SOW. TEA will base its selection on, among other things, demonstrated competence and qualifications of the Vendor and on the reasonableness of the proposed cost. TEA will apply the following criteria in assigning the total number of points of each portion of the SOW in selecting a Vendor:

<b>CATEGORIES</b>	<b>POSSIBLE POINTS</b>
A. Quality of Technical Component: 1. Adequacy and appropriateness of project design (20) 2. Understanding of prior studies and research (10) 3. Clear description of details for carrying out project (10)	40
B. Quality of Task/Activity Plan: 1. Activities are of sufficient scope and detail to provide evidence of satisfactory delivery of services and products (10) 2. Logical and appropriate time frames for completing project objectives (10)	20
C. Quality of Management Component: 1. Experience of organization in managing education-related research and evaluation projects of similar scope to that described in this SOW (15) 2. Personnel qualifications, including appropriate combination of programmatic, research/evaluation, and technical skill sets and experience (15)	30
D. Cost-Effectiveness and Appropriateness of Financial Resources Dedicated to Project: 1. Costs are appropriately aligned with major program objectives (15) 2. Costs associated with specific activities/tasks are reasonable for the work proposed (15)	30
<b>TOTAL</b>	<b>120</b>

TEA determines weights based on the criticality of the particular factor to the selection process. TEA cautions Vendors not to minimize the importance of adequate responses in any area because it carries less weight than other areas. TEA may develop a "short list" of qualified offers, and may determine that the Vendor(s) should submit a Best and Final Offer (BAFO). TEA will give each "short-listed" Vendor a reasonable opportunity for discussion and revision of their offer. After receipt of the BAFO(s), TEA will re-evaluate all Vendors submitting a BAFO based on the Evaluation Criteria. A preference may be given as authorized by the Texas Government Code. In addition, according to the Consultant law TGC 2254.021-.040, TEA can give preference to a Vendor whose principal place of business is in the state or who will manage the contract wholly from an office in the state [TGC § 2254.021](#). The Agency shall also give preference, among proposals that are otherwise comparable, to a proposal submitted by a Historically Underutilized Business (HUB).

**Suggested Format for Response Cover Page**

Submitted to the Texas Education Agency  
Purchasing, Contracts and Agency Services  
For  
SOW #701-16-028

- Title of Proposed Project:** **Comprehensive Web Development for New Generation System (NGS)**
- Respondent Organization:** (Name and address of organization submitting response. Include zip code.)
- Identification Number:** (Vendor's Federal Employer's Identification Number or SSN if an individual. If Vendor is a corporation or if individual is incorporated, the Vendor must also enter the charter number of Vendor or individual.)
- Response Developed By:** (Name, position, and telephone number of person responsible for development of response.)
- Project Administrator:** (Name, position, and telephone number of person to be in charge of proposed project.)
- Response Transmitted By:** (Name, position, and telephone number of official committing the Vendor to the proposed project.)
- Contracting Officer:** (Name, position, and telephone number of official with authority to negotiate contracts for Vendor)
- Duration of Project:** Award Date to August 31, 2016
- Total Budget for Proposed Project:** (Total of projected expenditures listed in budget section)
- Contains Proprietary Information:**  Check here if the material submitted contains proprietary information.
- Date Submitted:** (Date Vendor submitted the response to TEA.)

**CONTRACT TERMS AND CONDITIONS, AFFIRMATIONS, PROPOSAL PREFERENCES AND  
EXECUTION OF OFFER**

**A. Definitions as used in these Contract Terms and Conditions:**

1. **Contract** means the entire document, and all of TEA's attachments, appendices, schedules (including but not limited to the General Provisions and the Special Provisions), amendments and extensions of or to the Standard Contract
2. **Receiving Agency, Party, Owner or TEA** means the Texas Education Agency
3. **Bidder, Proposer or Respondent** may be used interchangeably in the competitive solicitation. Proposer and Respondent infer pre-solicitation award status and Contractor infers post-award status
4. **Bid package, proposal, or response** may be used interchangeably
5. **Contractor or Performing Agency** means the party or parties to this Contract other than TEA, including its or their officers, directors, employees, agents, representatives, consultants and subcontractors, and subcontractors' officers, directors, employees, agents, representatives and consultants
6. **Project Manager/Administrator** means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project
7. **Contract Project** means the purpose intended to be achieved through the Contract
8. **Amendment** means a Contract that is revised in any respect, and includes both the original Contract, and any subsequent amendments or extensions thereto
9. **Major Contract** means any contract over \$10 million cumulative over the life of the Contract
10. **Works** means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor for or on behalf of TEA at any time after the beginning date of the Contract ("Works" includes but is not limited to computer software, data, information, images, illustrations, designs, graphics, drawings, educational materials, assessment forms, testing materials, logos, trademarks, patentable materials, etc.) this does not include any pre-existing materials of Contractor, or any licensed third party materials provided by Contractor
11. **Intellectual Property Rights** means the worldwide intangible legal rights or interests evidenced by or embodied in: (a) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (b) any work of authorship, including any copyrights, moral rights or neighboring rights; (c) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (d) domain name registrations; and (e) any other similar rights. The Intellectual Property Rights of a party include all worldwide intangible legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses
12. **TEA Confidential Information** means information that is confidential under the provisions of the Family Educational Rights and Privacy Act (FERPA), the Texas Public Information Act, or other applicable state or federal laws. Examples of TEA Confidential Information include: (a) personally identifiable student information; (b) social security numbers; (c) driver's license numbers; (d) criminal background checks; (e) e-mail address of a member of the public, unless the individual waives his or her right to e-mail confidentiality by affirmatively consenting to disclose the e-mail address or the individual seeks to contract or has a contract with TEA; (e) certain personnel information concerning a TEA employee including home address, home telephone number, emergency contact information, and family member information (if the employee elects in writing to keep this information confidential), personal medical information, and information reflecting personal financial decisions such as the employee's choice of insurance carrier or choice to contribute money to a 401(k); (f) biometric identifiers such as fingerprints; (g) information about security vulnerabilities in TEA systems; and (h) SAS data sets

**B. Contingency:** The Contracts, including any amendments, extensions or subsequent Contracts are executed by TEA contingent upon the availability of appropriated funds by legislative act. Notwithstanding any other provision in this Contract or any other document, this Contract is void upon the insufficiency (in TEA's discretion) or unavailability of appropriated funds. In addition, this Contract may be terminated by TEA at any time for any reason upon notice to Contractor. Expenditures and/or activities for which Contractor may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.

**C. Indemnification:**

Acts or Omissions

Contractor shall indemnify and hold harmless the State of Texas and TEA, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, or resulting from any acts or omissions of Contractor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any purchase orders issued under the Contract. The defense shall be coordinated by Contractor with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Contractor may not agree to any settlement without first obtaining the concurrence from the office of the Attorney General. Contractor and TEA agree to furnish timely written notice to each other of any such claim.

## Infringements

- 1) Contractor shall indemnify and hold harmless the State of Texas and the TEA, and/or their employees, agents, representatives, contractors, assignees, and/or designees from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the performances or actions of Contractor pursuant to this Contract. Contractor and TEA agree to furnish timely written notice to each other of any such claim. Contractor shall be liable to pay all costs of defense including attorneys' fees. The defense shall be coordinated by Contractor, with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Contractor may not agree to any settlement without first obtaining the concurrence from the office of the Attorney General.
- 2) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by Contractor pursuant to TEA's specific instructions, (iv) any intellectual property right owned by or licensed to TEA, or (v) any use of the product or service by TEA that is not in conformity with the terms of any applicable license agreement.
- 3) If Contractor becomes aware of an actual or potential claim, or TEA provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against TEA, shall), at Contractor's sole option and expense; (i) procure for the TEA the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TEA's use is non-infringing.

CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TEA AND/OR THE STATE SHALL NOT BE LIABLE TO CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TEA, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

For local educational agencies (LEAs), regional education service centers (ESCs), institutions of higher education (IHEs), and state agencies: Contractor, to the extent permitted by law, shall hold TEA harmless from and shall indemnify TEA against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party and occurring or in any way incident to, arising from, or in connection with, any acts of Contractor in performance of the Contract Project.

- D. Subcontracting and Substitutions:** Contractor shall not assign, transfer or subcontract any of its rights or responsibilities under this Contract without prior formal written amendment to this Contract properly executed by both TEA and Contractor. TEA reserves the right to request changes in personnel assigned to the project. The TEA Project Manager must pre-approve any changes in key personnel throughout the contract term. Any changes to the HUB Subcontracting Plan (HSP) must be approved by TEA HUB Coordinator before staffing changes are initiated. Substitutions are not permitted without written approval of TEA Project Manager. The awarded Contractor will be responsible for maintaining business records documenting compliance with HUB Program requirements. Contractor shall submit a Progress Assessment Report (PAR) monthly documenting all subcontractor payments made in the preceding month. Submission of the PAR is a condition for payment. The selected Contractor shall also report all 2<sup>nd</sup> and 3<sup>rd</sup> Tier subcontracting in the monthly PAR. PAR's are due no later than the 10<sup>th</sup> day of the following month. The PAR is required to be submitted monthly, even if no activity occurred for the month. Reports shall be submitted electronically to the [HUBOffice@tea.texas.gov](mailto:HUBOffice@tea.texas.gov).
- E. Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.

**F. Contractor's Proposal:** Contractor's proposal that was furnished to TEA in response to the competitive solicitation (Request for Proposal) is incorporated in this Contract by reference. The provisions of this Contract shall prevail, however, in all cases of conflict arising from the terms of Contractor's proposal whether such proposal is a written part of this Contract or is attached as a separate document.

**G. Requirements, Terms, Conditions, and Assurances:** The terms, conditions, and assurances, which are stated in the competitive solicitation (Request for Proposal), in response to which Contractor submitted a proposal, are incorporated herein by reference for all purposes, although the current General Provisions shall prevail in the event of conflict.

**H. Records Retention and the Right to Audit:** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract Project. These records and accounts shall be retained by Contractor and made available for programmatic or financial audit by TEA and by others authorized by law or regulation to make such an audit for a period of not less than seven (7) years from the date of completion of the Contract Project or the date of the receipt by TEA of Contractor's final claim for payment or final expenditure report in connection with this Contract, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed.

Pursuant to Government Code, the state auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

Contractor further agrees that acceptance of funds under this Contract acts as acceptance for TEA to conduct an audit or investigation in connection with those funds. Contractor, subcontractors, and any entities receiving funds through this Contract shall cooperate fully with TEA in the conduct of the audit or investigation, including providing all records pertaining to this Contract that are requested.

**I. Intellectual Property Ownership:** Contractor agrees that all Works are, upon creation, works made for hire and the sole property of TEA. If the Works are, under applicable law, not considered works made for hire, Contractor hereby assigns to TEA all worldwide ownership of all rights, including the Intellectual Property Rights, in the Works, without the necessity of any further consideration, and TEA can obtain and hold in its own name all such rights to the Works. Contractor agrees to maintain written agreements with all officers, directors, employees, agents, representatives and subcontractors engaged by Contractor for the Contract Project, granting Contractor rights sufficient to support the performance and grant of rights to TEA by Contractor. Copies of such agreements shall be provided to TEA promptly upon request.

Contractor warrants that (i) it has the authority to grant the rights herein granted, (ii) it has not assigned or transferred any right, title, or interest to the Works or Intellectual Property Rights that would conflict with its obligations under the Contract, and Contractor will not enter into any such agreements, and (iii) the Works will be original and will not infringe any intellectual property rights of any other person or entity. These warranties will survive the termination of the Contract. If any preexisting rights are embodied in the Works, or grants to TEA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (b) authorize others to do any or all of the foregoing. Contractor agrees to notify TEA on delivery of the Works if they include any such preexisting rights. On request, Contractor will provide TEA with documentation indicating a third party's written approval for Contractor to use any preexisting rights that may be embodied or reflected in the Works.

Contractor agrees, at Contractor's expense, to indemnify, hold harmless and defend TEA and the State from claims involving infringement of third parties' licenses, trademarks, copyrights or patents.

**For School Districts and Nonprofit Organizations:** The foregoing Intellectual Property Ownership provisions apply to any school districts, nonprofit organizations, and their employees, agents, representatives, consultants and subcontractors.

**For Education Service Centers (ESCs):** The foregoing Intellectual Property Ownership provisions apply to an Education Service Center (ESC) and its employees, agents, representatives, consultants, and subcontractors. If an ESC or any of its subcontractor(s) wish to obtain a license agreement to use, advertise, offer for sale, sell, distribute, publicly display, publicly perform or reproduce the Works, or make derivative works from the Works, then express written permission must first be obtained from TEA's Office of Legal Services.

**For Colleges and Universities:** The foregoing Intellectual Property Ownership provisions apply to any colleges and universities and their employees, agents, representatives, consultants, and subcontractors; provided, that for all Works created or conceived by colleges or universities under the Contract, they are granted a non-exclusive, non-transferable, royalty-free license to use the Works for their own academic and educational purposes only. Colleges and universities are prohibited, however, from advertising, offering for sale, selling, distributing, publicly displaying, publicly performing, or reproducing the Works, or making derivative works from the Works that are created or conceived under this Contract, without the express written permission of TEA Legal Division.

- J. Time Delays; Suspension; Sanctions for Failure to Perform; Noncompliance:** Time is of the essence. Contractor's timely performance is essential to this Contract.

Suspension

If this Contract is suspended by TEA prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to this Contract prior to suspension shall be determined by TEA and paid to Contractor as soon as reasonably possible. TEA shall not be required to pay any standby hourly rates during a suspension of Work, if TEA suspends performance of the Work because the Work is defective, or Contractor fails to supply sufficiently skilled workers or suitable materials or equipment, or fails to provide required insurance coverage, or fails to furnish or perform the Work in such a way that the completed Work will conform to this Contract.

Sanctions

If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this Contract in whole or in part; and the seeking of other remedies as may be provided by this Contract or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA.

- K. Information Security Requirements; Proprietary; FERPA; Confidential Information:**

Access to Confidential TEA Information. Contractor represents and warrants that it will take all necessary and appropriate action within its abilities to safeguard TEA Confidential Information and to protect it from unauthorized disclosure. If Contractor discloses any TEA confidential information to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor. Whenever communications with Contractor necessitate the release of Confidential TEA Information, additional TEA Confidential forms will need to be signed by each individual who will require access to or may be exposed to that information. Contractor shall access TEA's systems or Confidential TEA Information only for the purposes for which it is authorized. TEA reserves the right to review Contractor's security policy to ensure that any data that is on Contractor's servers is secure. Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s).

Contractor shall ensure that any TEA Confidential Information in the custody of Contractor is properly sanitized or destroyed when the information is no longer required to be retained by TEA or Contractor in accordance with this Contract. Electronic media used for storing any Confidential TEA Information must be sanitized by clearing, purging or destroying in accordance with such standards established by the National Institute of Standards and Technology and the Center for Internet Security. These standards are also required if Contractor is collecting, maintaining, or analyzing data gathered, collected, or provided under this Contract. Contractor must maintain a record documenting the removal and completion of all sanitization procedures with the following information:

- (1) Date and time of sanitization/destruction;
- (2) Description of the item(s) and serial number(s) if applicable;
- (3) Inventory number(s); and
- (4) Procedures and tools used for sanitization/destruction.

No later than 60 days from Contract expiration or termination or as otherwise specified in this Contract, Contractor must complete the sanitization and destruction of the data and provide to TEA documentation that the sanitization has been completed. The documents must be certified by an authorized agent of the company.

**Family Educational Rights and Privacy Act (FERPA)**

Performing Party, its employees and subcontractor's, agree that in executing tasks on behalf of the TEA, they will not use any student-identifying information in any way that violates the provisions of [FERPA](#), and will destroy or return all student-identifying information within sixty (60) days of project completion. Performing Party also agrees not to disclose any information to which it is privy under this Contract without the prior consent of the agency.

Access to Internal TEA Network and Systems

As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures. TEA's remote access request procedures will require Contractor to submit TEA Applicable Access Request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Information Security Officer. TEA, in its sole discretion, may deny network

or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. TEA reserves the right to audit the security measures in effect on Contractor's connected systems without prior warning. TEA also reserves the right to immediately terminate network and system connections not meeting such requirements.

#### Disclosure of Security Breach

Contractor shall provide notice to TEA's Project Manager and TEA's Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or confidential TEA information ("Security Incident"). Within 24 hours of the discovery or reasonable belief of a Security Incident, Contractor shall provide a written report to TEA's Information Security Officer detailing the circumstances of the incident which includes at a minimum:

- (1) Description of the nature of the Security Incident;
- (2) The type of TEA information involved;
- (3) Who may have obtained the information;
- (4) What steps Contractor has taken or will take to investigate the Security Incident;
- (5) What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
- (6) A point of contact for additional information.

Each day thereafter until the investigation is complete, Contractor shall provide TEA's Information Security Officer with a written report regarding the status of the investigation and the following additional information as it becomes available:

- (1) Who is known or suspected to have gained unauthorized access to TEA information;
- (2) Whether there is any knowledge if TEA information has been abused or compromised;
- (3) What additional steps Contractor has taken or will take to investigate the Security Incident;
- (4) What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
- (5) What corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure.

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Security Incident, and should TEA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s). Subject to review and approval of TEA's Information Security Officer, Contractor, at its own cost, shall provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If TEA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to TEA by Contractor. If Contractor does not reimburse such costs within 30 days of TEA's written request, then TEA shall have the right to collect such costs.

- L. Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within 30 days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
- M. Capital Outlay:** If Contractor purchases capital outlay (furniture and/or equipment) to accomplish the Contract Project, title will remain with Contractor for the period of the Contract. TEA reserves the right to transfer capital outlay items for contract noncompliance during the contract period or as needed after the ending date of the Contract. This provision applies to any and all furniture and/or equipment regardless of unit price and how the item is classified in Contractor's accounting record. This provision is applicable when federal funds are utilized for the Contract.
- N. TEA Property (terms):** In the event of loss, damage or destruction of any property owned by or loaned by TEA while in the custody or control of Contractor, Contractor shall indemnify TEA and pay to TEA the full value of or the full cost of repair or replacement of such property, whichever is the greater, within 30 days of Contractor's receipt of written notice of TEA's determination of the amount due. This applies whether the property is developed or purchased by Contractor pursuant to this Contract or is provided by TEA to Contractor for use in the Contract Project. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.

- O. State of Texas Laws:** In the conduct of the Contract Project, Contractor shall be subject to laws or rules of the State of Texas pertaining to and or governing this Contract and the Contract Project. This Contract constitutes the entire agreement between TEA and Contractor for the accomplishment of the Contract Project. This Contract shall be interpreted according to the laws of the State of Texas except as may be otherwise provided for in this Contract.
- P. Point of Contact and Escalation:** All notices, reports and correspondence required by this Contract shall be in writing and delivered to TEA Project Manager listed below or their successors in office. Within 30 days of execution of a contract, the respective Parties will designate the next level of personnel within each organization to address conflicts or ambiguity that cannot be resolved at the Project Manager level.

TEA	CONTRACTOR
Texas Education Agency William B. Travis Building 1701 N. Congress Avenue Austin, Texas 78701	

- Q. Federal Rules, Laws, and Regulations That Apply to all Federal Programs:** Contractor shall be subject to and shall abide by all federal laws, rules, and regulations, pertaining to the Contract Project, including, but not limited to:
  1. Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. sec. 12101, and the regulations effectuating its provisions contained in 28 CFR Parts 35 and 36, 29 CFR Part 1630, and 47 CFR Parts 0 and 64;
  2. Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 CFR Part 100;
  3. Title IX of the Education Amendments 1972, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions contained in 34 CFR Part 106, if Contractor is an educational institution;
  4. Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions contained in 34 CFR Parts 104 and 105;
  5. The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations contained in 34 CFR, Part 110;
  6. Family Educational Rights and Privacy Act of 1975, as amended, and the implementing regulations contained in 34 CFR, Part 99, if Contractor is an educational institution;
  7. Section 509 of H.R. 5233 as incorporated by reference in P.L. 99-500 and P.L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress);
  8. P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act; P.L. 103-382, Title XIV, General Provisions of the Elementary and Secondary Education Act, as amended; and
  9. General Education Provisions Act, as amended.
- R. Forms, Assurances, and Reports:** Contractor shall timely make and file with the proper authorities all forms, assurances and reports required by federal laws and regulations. TEA shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations coming to TEA's attention, and may deny payment or recover payments made by TEA to Contractor in the event of Contractor's failure so to comply. Contractor who is indebted or owes delinquent taxes to the state will have any payments under the Contract applied toward the debt or delinquent taxes owed the state until the account is paid in full, regardless of when the debt or delinquency was incurred. This provision does not apply if the warrant or transfer results in payments being made in whole or in part with money paid to the state by the Federal Government. Pursuant to 34 TAC §201.14 -18 and Texas Government Code, Chapter 2161, Contractors shall maintain business records documenting compliance with the HUB subcontracting plan (HSP) and shall submit a compliance report to TEA monthly, in the format required by TEA. The compliance report submission shall be required as a condition for payment. If Contractor subcontracts any part of the Contract in a manner that is not consistent with its HSP, the selected respondent must submit a revised HSP before subcontracting any of the work under the Contract. If Contractor subcontracts any of the work without prior authorization and without complying with this section, Contractor is deemed to have breached the Contract and is subject to any remedial actions provided by Government Code, Chapter 2161, and other applicable state law.
- S. Signature Authority; Final Expression; Superseding Document:** Contractor certifies that the person signing this Contract has been properly delegated this authority. The Contract represents the final and complete expression of the terms of agreement between the parties. The Contract supersedes any previous understandings or negotiations between the parties. Any representations, oral statements, promises or warranties that differ from the Contract shall have no force or effect. The Contract may be modified, amended or extended only by formal written amendment properly executed by both TEA and Contractor.

- T. Antitrust:** By signing this Contract, Contractor, represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has, (1) violated the antitrust laws of the State of Texas under Texas Business and Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.
- U. Family Code Applicability:** By signing this Contract, Contractor, if other than a state party, certifies that under Section 231.006, Family Code, that Contractor is not ineligible to receive specified grant, loan, or payment under this contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. TEA reserves the right to terminate this Contract if Contractor is found to be ineligible to receive payment. If Contractor is found to be ineligible to receive payment and the Contract is terminated, Contractor is liable to TEA for attorney's fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second Contract, and any other damages or relief provided by law or equity.
- V. Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract. The parties may agree to mediation of their dispute at any time. However, if all issues in dispute are not completely resolved through direct negotiations between the parties within 180 days after TEA receives Contractor's notice of claim, then the parties must submit the dispute to mediation before a mutually acceptable mediator in Travis County, Texas. The mediation must be completed on or before 270 days after TEA receives Contractor's notice of claim. Completion of the mediation is a condition precedent to the filing of a contested case hearing under Chapter 2260. TEA's participation in mediation or any other dispute resolution process shall not waive any of TEA's contractual or legal rights and remedies, including but not limited to sovereign immunity.
- W. Interpretation:** In the case of conflicts arising in the interpretation of wording and/or meaning of various sections, parts, Appendices, General Provisions, Special Provisions, Exhibits, and Attachments or other documents, TEA Contract and its General Provisions, Appendices and Special Provisions shall take precedence over all other documents which are a part of this Contract.
- X. Education Service Center:** No funds transferred to Regional Education Service Centers or to school districts may be used to hire a registered lobbyist.
- Y. Compliance with Laws:** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Contractor's performance, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. For the entire duration of the Contract, Contractor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. When required or requested by TEA, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- Z. Public Information:** TEA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to TEA under this Contract constituting a record under the Act is received by TEA, the information must qualify for an exception provided by the Act in order to be withheld from public disclosure. Contractor authorizes TEA to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be exempt from public disclosure under the Act. If TEA does not have a good faith belief that information may be subject to an exception to disclosure, TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. Contractor waives any claim against and releases from liability TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Act.
- Under [Section 2252.907](#) of the Texas Government Code, a contract between a state governmental entity and a non-governmental contractor involving the exchange or creation of public information, as defined by the Texas Government Code Section 552.002, must require the non-governmental contractor to make any information created or exchanged with the state pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. TEA Project Manager will provide the specific format by which Contractor is required to make the information accessible by the public.
- AA. Gratuities:** By signing this Contract, Contractor represents and warrants that Contractor has not given, offer to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

- BB. Venue and Jurisdiction:** Subject to and without waiving any of TEA's rights, including sovereign immunity, this Contract is governed by and construed under and in accordance with the laws of the State of Texas. Venue for any suit concerning this solicitation and any resulting contract or purchase order shall be in a court of competent jurisdiction in Travis County, Texas.
- CC. Protests:** Any actual or prospective Bidder, Respondent, or Contractor who is aggrieved in connection with the solicitation, evaluation, or award of this or any other contract by TEA may submit a formal protest to the Director of TEA's Contracts, Purchasing and Agency Services (PCAS) Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of TEA's contracting process. TEA will not be required to consider the merits of any protest unless the written protest is submitted within 10 working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and rules (Title 19 of the Texas Administrative Code, [§30.22](#) and [§30.2002](#)).
- If the protest procedure results in a final determination by TEA that a violation of law has occurred in its contracting process in a case in which a contract has been awarded, then TEA may declare the Contract void at inception. In that event, the party who had been awarded the Contract shall have no rights under the Contract and no remedies under the law against TEA
- DD. Liability for and Payment of Taxes:** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees. TEA shall not be liable for any taxes resulting from this Contract.
- EE. Severability:** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein. The remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
- FF. Conformance:** Contractor warrants that all goods and services furnished shall conform in all respects to the terms of this Contract, including any drawings, specifications or standards incorporated herein, and any defects in materials, workmanship, and free from such defects in design. In addition, Contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
- GG. Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees assigned to TEA projects have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TEA as to the facts and circumstances surrounding the conviction.
- HH. Criminal Background Checks:** If during the term of this Contract, Contractor, and/or Contractor staff, or subcontractor have access to Texas public school campuses, all Contractor and/or Contractor's staff must submit to a national criminal history record information review (includes fingerprinting) and meet all eligibility standards and criteria as set by TEA before serving in assignments on behalf of TEA. This requirement applies to all individuals who currently serve or will serve in TEA assignments that have the possibility of direct contact with students. Assignments are contingent upon meeting TEA eligibility standards. Contractor and/or any staff member of Contractor who may perform services under this Contract must complete this criminal history review before the beginning of an assignment. If said individuals have not completed this requirement or the review results in a determination that Contractor is not eligible for assignment, this Contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.
- II. Assignment of Contract:** This Contract may not be assigned, sold, or transferred without the express written consent of TEA Purchasing, Contracts, and TEA Services (PCAS) Division. An attempted assignment after Contract award without TEA approval will constitute a material breach of Contract.
- JJ. Buy Texas:** In accordance with Government Code, Section 2155.444, the State of Texas requires that during the performance of a Contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state. This provision does not apply if Contractor receives any federal funds under this Contract.
- KK. Excluded Parties List System:** TEA and Contractor must adhere to the directions provided in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, which may be viewed at <http://www.whitehouse.gov/briefing-room/presidential-actions/executive-orders>. That Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.sam.gov>.

**LL. Suspension and Debarment:** Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal, state or local government entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. If Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Contract.

**MM. Electronic and Information Resources Accessibility Standards:** State agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic Information Resources specified in 1TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

Regulations updating the accessibility requirements for entities covered by Section 508 of the Rehabilitation Act of 1973 have been adopted in FY 2015. Therefore, all current and potential contractors are hereby notified of the changes. The current technical requirements for accessibility contained within this regulation form the basis for our Texas TAC rules on EIR Accessibility.

This refresh of 508 uses the [WCAG 2.0 AA Accessibility Guidelines](#) (also ISO/IEC standard 40500) as the new technical standard that federal agencies are required to meet when procuring products and services. The Texas Department of Information Resources is modifying the TAC rules to align with it.

Given this change, all Texas agencies and institutions of higher education must begin using or specifying WCAG 2.0 AA guidelines for the design of new websites or web applications. The rationale is twofold:

1. It is technically difficult and expensive to bring these websites/applications to WCAG 2.0 AA later.
2. WG 2.0 AA is a superior, more flexible standard and is in use all over the world. If a website is compliant with WCAG 2.0 AA, it will, by default comply with our current TAC rules on EIR Accessibility.

Web development Contractors should already be familiar with designing to this standard, and their ability to meet these standards should be a strong consideration in the selection process. The free online resources listed below are available to assist developers and content producers in transitioning to these guidelines.

[WCAG 2.0 at a glance](#)

[IBM Developer Guidelines Web Checklist](#)

[Webaim.org Accessibility Checklist](#)

All websites must follow Federal 508 accessibility requirements and Web Content Accessibility Guidelines (WCAG) 2.0 AA standards and be tested for accessibility before acceptance by TEA. For sites developed outside of TEA, the vendor must contract with a third party with expertise and a proven track record in accessibility testing. This company must evaluate the site and produce a report that verifies the site is compliant to (WCAG) 2.0 AA.

The awarded Contractor must employ real users with disabilities for manual testing. Contractor must provide a report that will include the results of auto-testing, screen-by-screen assessments, pass/fail status for each of the identified compliance standards to be met and recommendations for how to repair the screens/pages that do not meet the standards. Remediation recommendations shall be provided to the code level. The report should include documentation of the experience of real users with disabilities and may recommend techniques for improving the usable accessibility of the application. Contractor shall validate, by title, if all accessibility requirements have been met.

**NN. Collusion:** Contractor certifies and represents that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a Contractor's bid or proposal is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.

**OO. Social Security Numbers Withheld:** TEA will not provide Social Security Numbers (SSNs) to any Contractor under this Contract unless specifically specified as part of the project requirements. TEA, its Contractors and their subcontractors, will not require or request school districts to provide SSNs under this Contract. Contractor agrees that in executing tasks on behalf of TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information to TEA within 30 days of project completion. An authorized officer of the company must certify that ALL records have either been properly destroyed or returned to TEA in order to close out the Contract.

**PP. Nondisclosure; Press Releases:** All information gathered, produced, derived, obtained, analyzed, controlled or Accessed by Contractor in connection with a contract resulting from a solicitation ("Confidential Information") shall be and remain Confidential Information and shall not be released or disclosed by Contractor without the prior written consent of TEA, which consent must specifically identify the Confidential Information to be disclosed by Contractor and the nature of the disclosure for which consent is sought. Contractor, its employees and subcontractors, agree that in executing tasks on behalf of TEA.

Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and TEA, its officers and employees for any claims or damages that arise from the disclosure by Contractor or its Contractors of information held by the State of Texas, except when defined as part of the Work under this Contract.

Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of TEA.

**QQ. Independent Contractor:** Contractor shall serve as an independent Contractor in providing services under this Contract. Contractor's employees are not and shall not be construed as employees or agents of the State of Texas.

**RR. Contractor Performance:** All state agencies must report unsatisfactory Contractor performance on purchases over \$25,000. Proposers who are in default or otherwise not in good standing under any other current or prior contract with TEA at the time of selection will not be eligible for award of this Contract. A Proposer's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of Government Code §§ [2155.074](#), [2155.075](#), [2156.007](#), [2157.003](#), and [2157.125](#). Proposers may fail this selection criterion for any of the following conditions: A score of less than 90% in Contractor Performance System, currently under a Corrective Action Plan, having repeated negative Contractor performance reports for the same reason, having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.). TEA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through Contractor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108). TEA or a designee may conduct periodic contract compliance reviews without advance notice, to monitor performance. TEA may examine other sources of Contractor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TEA, and any negative findings, as determined by TEA, may result in non-award to the Proposer.

Agencies report satisfactory and exceptional Contractor performance to assist in determining best value. In accordance with Texas Government Code, §2155.074 and §2155.75, Contractor performance may be used as a factor in future contract awards.

Contractor performance information is located on the CPA website at [http://www.cpa.state.tx.us/procurement/prog/vendor\\_performance/](http://www.cpa.state.tx.us/procurement/prog/vendor_performance/)

**SS. Termination:** This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the Contract Terms and Conditions.

1. **Termination for Convenience:** TEA may terminate this Contract at any time, in whole or in part, without penalty, by providing 15 calendar days advance written notice to Contractor. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for reimbursing only those expenses incurred by Contractor that are permitted, properly performed under this Contract and were incurred prior to the effective termination date.

2. **Termination for Cause/Default:** If Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies Contractor in writing prior to the exercise of such remedy.

Contractor shall remain liable for all covenants and indemnities under the Contract. Contractor shall be liable for all costs and expenses, including court costs, incurred by TEA with respect to the enforcement of any of the remedies listed herein.

3. **Termination Due to Changes in Law:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either party cannot reasonably fulfill this Contract and if the parties cannot agree to an amendment that would enable substantial continuation of the Contract, the parties shall be discharged from any further obligations under this Contract.

4. **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all associated work products and documentation obtained from Contractor under the Contract.

5. **Survival of Terms:** Termination of the Contract for any reason shall not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification.

6. **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a New Contractor, the Outgoing Contractor shall hand-over to the New Contractor all "Works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract to another. The Outgoing Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the New Contractor within 10 days of announcement of award at the New Contractor's expense for data processing and production, packing and shipping. The Outgoing Contractor will be responsible for providing the services identified in the Contract until all records have been completely transferred to the New Contractor. The Outgoing Contractor is responsible for performing due diligence to ensure that all the transition activities are identified and completed during the contract transition.

The Outgoing Contractor shall submit to TEA requested reports and data. TEA will not release the final invoice until all materials are returned to TEA or their designee. TEA Project Manager shall approve the Transition Plan prior to its implementation. The Transition Plan must minimize the impacts on continuity of operations and maintain communication with TEA Project Manager and the New Contractor.

- TT. Amendments:** All amendments to this Contract will be in a manner as prescribed by TEA Contracting Process and are, subject to Paragraph B of the General Provisions and will be made on AMENDMENT TO TEA STANDARD CONTRACT form. All amendments will be initiated by TEA PCAS staff. An amendment to this Contract will become effective on the date of signature of TEA or the effective date shown on the amendment document whichever is first. All amendments must be signed by both parties.

If the initial major contract (defined as expected value of \$10 million or more) solicitation document submitted to the CPA Contract Advisory Team (CAT) changes substantially, agencies are required to resubmit their solicitation documents(s) for CAT review. Changes in the major contract solicitation are considered substantial when: 1) the solicitation change caused the estimated value for the original term of the Contract, not including renewal periods, to increase by 20% or more; 2) or there are significant revisions, deletions and/or additions to the specifications, statement of work (SOW), set(s) of deliverables, performance measures, payment methodology, etc.

1. For all other contracts (excludes major contracts) the Contractor is permitted to re-budget within the approved budget to meet unanticipated requirements and to make limited changes 25% within a task without the issuance of a written Amendment as long as the total budget amount does not change. Contractors are required to report deviations from budget and request prior approvals from the TEA Project Manager. Additionally, a revised budget document must be submitted to TEA Project Manager for approval. Once approved, the documents must be submitted to PCAS for incorporation into the Contract. **Failure to submit the budget documents will result in invoices being rejected or payment delayed.**
2. Written amendments are required for the following contract changes:
  - a. Any revision which would result in the need for additional funding;
  - b. Revisions or additions to the scope of work, deliverables, or objectives of the contract (regardless of whether there is an associated budget revision requiring prior approval). Increases of 20% or more for major contracts must be approved by the Texas Comptroller;
  - c. A request to extend the period of the contract;
  - d. Any reduction of funds or reduction in the scope of work;
  - e. Whenever a line item is added;
  - f. An increase in the quantity of capital outlay item(s) requested; and
  - g. An increase or decrease in the number of positions charged to contract.

- UU. Payment:** Payment for goods or services purchased with state-appropriated funds will be issued by electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Any payment owed by TEA must be transmitted electronically to Contractor no later than 30 days after the later of:

1. Day on which TEA received the goods;
2. Date the performance of the service under the contract is completed; or
3. Day on which TEA received the complete and correct invoice for goods or services.

Invoices must be submitted to [TEAAccountsPayable@tea.texas.gov](mailto:TEAAccountsPayable@tea.texas.gov) and TEA Project Manager. Additional information and a Direct Deposit Authorization application may be found at: <https://fm.xcpa.state.tx.us/fm/payment/index.php>.

- A. Payment for service(s) described in this Contract is contingent upon satisfactory completion of the deliverables or services. TEA project managers may also utilize a Deliverables and Services Review and Acceptance Process written procedures. When the formal procedures are to be utilized, the TEA project manager will provide to the selected Contractor a copy of the Handbook. Contractor must submit final deliverables to TEA for review and approval prior to invoicing. These include test items developed under the Contract. "Final" deliverable means a deliverable that, in the belief and testimony of Contractor, is in final completed form and in compliance with all required specifications as defined by project documentation and this Contract. TEA will review each deliverable, including test items, submitted by Contractor for quality and alignment to the deliverable definition agreed to under the "Deliverables and Services Definition Process". TEA will have 15 working days to approve a deliverable or request revisions to the deliverable. TEA must review and approve any deliverable before it may be invoiced by Contractor. If TEA finds a submitted deliverable to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process" provided by the TEA Program Manager, located in the Service Level Agreement or the Contract Monitoring Tool. Contractor will have 10 working days to provide a Corrective Action Plan and address the quality or other compliance requirement and resubmit the deliverable. Additional costs incurred by Contractor that result from repeated submissions and revising of substandard deliverables will be borne solely by Contractor and not charged against the Contract or to TEA. This process will apply to all deliverables and requirements of the Contract, including test items developed. This does not preclude an arrangement that allows Contractor to bill against a deliverable as progress is made toward completing that deliverable, so long as documentation of such progress in a form and nature satisfactory to TEA is provided and is approved by TEA. It is up to Contractor to request incremental billing based on progress towards a deliverable, and such a request must be approved by TEA prior to submission of any invoice by Contractor. TEA reserves the right to reject and not provide payment for deliverables found to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process", including test items developed under the Contract. Contractor is strongly encouraged to collaborate with TEA on draft versions of any deliverables or services and request review(s) of such draft versions before submitting a final version.
- B. Retainage: TEA may withhold 5% or less of each payment as retainage for certain projects. Retainage fees must be stated in the competitive solicitation and documented in the Contract. The fees may not be arbitrarily imposed after execution of the Contract. The release of retainage shall be requested in the final invoice.
- C. Unless otherwise stated, payment under this Contract will be made upon performance of services based upon submission of an expenditure report/invoice, properly prepared and certified, outlining expenditures by cost category. Include the contract number, purchase order number, and the Texas Comptroller of Public Accounts Texas Identification Number (TIN) on all invoices/expenditure reports. The cost categories provided in the expenditure report/invoice must coincide with the cost categories detailed in the approved budget. A list of tasks/activities performed during the invoice period must accompany the expenditure report/invoice. The final expenditure report/invoice is due within 45 days after the end of the Contract. Payment on the final expenditure report is contingent upon receipt of all reports/products required by this Contract.
- D. An encumbrance, accounts payable, and expenditure, as with all other contract accounting terms, will be as defined in the *Financial Accounting and Reporting Module of TEA Financial Accountability System Resource Guide*. All goods must have been received and all services rendered by the ending date of this Contract in order for Contractor to include these costs as either expenditures or as accounts payable and, thereby, recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- E. Contractor who is indebted or owes delinquent taxes to the state will have any payments under the Contract applied toward the debt or delinquent taxes owed the state until the amount is paid in full, regardless of when the debt or delinquency was incurred. TEA shall determine whether a payment law prohibits the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person before TEA enters into a written contract with that person.

Contractor may verify its account status by accessing the Texas Comptroller's website at [https://fmx.cpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons\\_in\\_debted](https://fmx.cpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_in_debted)

- VV. Prohibition of text messaging and emailing while driving during official federal grant business:** Federal grant recipients and their grant personnel are prohibited from texting messaging while driving a government owned vehicle or while driving their own privately owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13513, "Federal Leadership On Reducing Text Messaging While Driving," effective October 1, 2009.

**WW. Insurance:** Contractor represents and warrants that it will, within five business days of being requested by TEA, provide TEA with current certificates of insurance or other proof acceptable to TEA of the following insurance coverage:

Workers Compensation & Employers Liability: Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits.

Workers Compensation: Statutory Limits

Employers Liability: Each Accident \$1,000,000

Disease- Each Employee \$1,000,000

Disease-Policy Limit \$1,000,000

This state of Texas website (Coverage starts with 406 of the Labor code) addresses what Texas requires may be found at: <http://www.tdi.texas.gov/wc/act/index.html>

Commercial General Liability: Occurrence based:

Bodily Injury and Property Damage

Each occurrence limit: \$1,000,000;

Aggregate limit: \$2,000,000;

Medical Expense each person: \$5,000;

Personal Injury and Advertising Liability: \$1,000,000;

Products /Completed Operations Aggregate Limit: \$2,000,000; and

Damage to Premises Rented to You: \$50,000

Contractor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with "A" rating from A.M. Best, and authorized to provide the corresponding coverage. Contractor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least 30 days prior written notice to TEA. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide TEA with an executed copy of the policies immediately upon request.

**XX. Force Majeure:** Neither Contractor nor TEA shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this SOW caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three business days of the existence of such force majeure, or otherwise waive this right as a defense.

**YY. Drug Free Workplace Policy:** Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**ZZ. Abandonment or Default:** If Contractor defaults on the Contract, TEA reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible Proposer. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by TEA based on the seriousness of the default.

The Texas Government Code and Family Code sites referenced in this document may be viewed at:

<http://www.statutes.legis.state.tx.us/>

The Texas Administrative Code site referenced in this document may be viewed at:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.viewtac](http://texreg.sos.state.tx.us/public/readtac$ext.viewtac)

**AFFIRMATIONS:**

Proposer has read, understands, and agrees to be bound to the terms and conditions stated in the SOW if a contract is awarded to Proposer pursuant to this SOW. By signature hereon, the Proposer certifies that:

All statements and information prepared and submitted in the response to this SOW are current, complete and accurate.

Proposer has not given, offered to give, not intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

Pursuant to [Texas Government Code §2155.004\(b\)](#), the Proposer certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

[Texas Government Code §2252.901](#) prohibits the agency into entering into an employment contract, a professional services contract, or a consulting services contract with a former or retired TEA employee before the first anniversary of their last date of regular employment. If TEA enters into a “professional services” contract with a corporation, firm, or other business entity that employs a former or retired employee during the first year of the past employee’s departure from the agency, the former or retired employee is restricted from performing services on projects that the employee worked on while employed at TEA.

Under [Texas Government Code §572.069](#), a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.

Under [Texas Government Code §2155.006\(b\)](#), a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

Proposer certifies that they are in compliance with [Texas Government Code, Title 6, Subtitle B, §669.003](#) relating to contracting with executive head of a state agency. If Section 669.003 applies, Proposer will complete the following information in order for the bid to be evaluated.

Name of Former Executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of Separation from State Agency: \_\_\_\_\_

Position with Bidder: \_\_\_\_\_ Date of Employment with Bidder: \_\_\_\_\_

Pursuant to Texas Government code, Title 10, Subtitle D, Section 2155.004(a), the bidder has not received compensation for participation in the preparation of specifications for this solicitation.

Contractor shall provide to Agency, Contractor's nine (9) digit Federal Employer's Identification Number (FEI#) or Social Security Number (SSN) if Contractor is an individual, or Contractor's fourteen (14) Digit State of Texas Payee Identification Number (TIN). If Contractor is incorporated, Contractor shall also provide to Agency the corporation's charter number issued by the Texas Secretary of State's office. Information provided by the contractor will be verified by TEA.

Contractor's FEI#	
Contractor's SSN	
Contractor's TIN	
Contractor's charter #	

TEA has a policy of being a smoke-free agency. The policy reflects our commitment to providing a healthy environment for all our employees and visitors. This policy prohibits smoking within any state building or on the grounds. Contractor, by acceptance of this contract, agrees to abide by this policy when on the property of {Agency}. The undersigned is an authorized official for the Proposer and certifies that the proposal submitted with this “Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences” instrument is in full compliance with the provisions expressly stated above. I further certify that the proposal submitted with this instrument is allowed to claim any of the Chapter 2155 Texas Government Code preferences checked below:

**PROPOSAL PREFERENCES**

The Proposer if selected as the Contractor, will be required to purchase products and materials produced in this state when they are available at a price and time comparable to products and materials produced outside of Texas (TX Govt. Code § 2155.4441).

Check below if claiming a preference included in Chapter 2155 of the Texas Government Code and in Rule 1 TAC 113.8

<input type="checkbox"/>	§ 2155.441	Products of persons with mental or physical disabilities
<input type="checkbox"/>	§ 2155.442	Energy efficient products
<input type="checkbox"/>	§ 2155.443	Rubberized asphalt paving material
<input type="checkbox"/>	§ 2155.444	Texas produced supplies, materials, or equipment; or USA supplies, materials, or equipment over foreign products
<input type="checkbox"/>	TAC§ 2038 D	Preference to services offered by a Texas bidder
<input type="checkbox"/>	§ 2155.444	Texas agriculture products
<input type="checkbox"/>	§ 2155.445	Recycled, remanufactured, or environmentally sensitive products made of recycled materials
<input type="checkbox"/>	§ 2155.446	Paper containing recycled fibers
<input type="checkbox"/>	§ 2155.447	Recycled motor oil and lubricants
<input type="checkbox"/>	§ 2155.449	Products produced in facilities on rehabilitated property as certified by section 361.609 of the Texas Health and Safety Code
<input type="checkbox"/>	§ 2155.449	Products and services from economically depressed or blighted areas
<input type="checkbox"/>	§ 2155.449	Products and services from Historically Underutilized Business or small business pursuant to the goals and objectives stated in chapter 2161 of the Texas Government Code
<input type="checkbox"/>	§ 2155.444	Goods produced or offered by service-disabled veterans.
<input type="checkbox"/>	§ 2155.445	Preference to manufacture that has recycle program for computer equipment.
<input type="checkbox"/>	§ 2155.452	Preference to contractors providing foods of higher nutritional value.

**EXECUTION OF OFFER**

In compliance with this SOW, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted in the proposal or bid. When a Texas business address shown hereon that address is, in fact, the legal business address of Proposer and proposer qualifies as a Texas Resident Bidder Under TAC Title 34, Part 1, Chapter 20.

<b>PROPOSER/COMPANY NAME:</b>
<b>STREET ADDRESS:</b>
<b>CITY/STATE/ZIP:</b>
<b>TELEPHONE #:</b>
<b>FACSIMILE #:</b>
<b>EMAIL ADDRESS:</b>
<b>NAME OF PROPOSER'S AUTHORIZED AGENT:</b>
<b>TITLE OF PROPOSER'S AUTHORIZED AGENT:</b>
<b>SIGNATURE OF AUTHORIZED AGENT:</b>

**THIS ATTACHMENT "B" MUST BE SIGNED AND RETURNED WITH YOUR PROPOSAL**

Contractor acknowledges that under state law and TEA policy, they may not disclose any information during the solicitation process (upon opening the proposal and during negotiations). The solicitation process must remain confidential and is exempt from open records until such time that a contract is awarded. Failure to abide to this requirement will result in disqualification.

**Pricing Proposal**

Vendor shall designate a firm, fixed cost for the NGS Comprehensive Web Development. The Vendor shall

Option A: Provide a list of all deliverables required to complete the NGS Comprehensive Web Development

Option B: Address each of the deliverables listed below and add any additional deliverables that may be required to complete the NGS Comprehensive Web Development.

For each scheduled deliverable listed, provide a firm, fixed cost for the deliverable. The fee shall be quoted on a fixed-fee, all-inclusive basis. On a separate sheet(s), the Vendor shall provide a cost breakdown for each deliverable indicating calculation. At a minimum, this shall include: activity performed, service title category for every resource that will work to complete the deliverable, number of hours for each resource, and rate of pay for each resource, as well as any other incidental expenses that will be charged. This list can be as detailed or generic as necessary to provide the information desired.

**Sample Pricing Sheet**

Task #	Task Name	Price
1.	<b>Project Management</b>	
2.	<b>Website Maintenance</b>	
3.	<b>System Maintenance Services and Administration Support for Maintenance/Development Environment</b>	
4.	<b>Other Services</b>	

**Comprehensive Web Development for New Generation System (NGS)**  
**ACCESS TO CONFIDENTIAL INFORMATION**

I understand that any unauthorized disclosure of confidential, sensitive, and restricted student information is illegal as provided in the Family Educational Rights and Privacy Act of 1974 (FERPA) and in the implementing of federal regulation found in 34 CFR, Part 99.

I also understand that failure to observe these restrictions is prohibited by the Texas Government Code, Section 552.352 and that such an offense constitutes a Class A misdemeanor.

I certify that I have read and understand the above statement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**SOW #701-16-028**  
**Comprehensive Web Development for New Generation System (NGS)**  
**Addendum 1**

**Questions received by Wednesday, June 1, 2016**

The SOW timeline is changed as follows:

**9.1 Tentative Sequence of Events/Critical Dates**

Date	Event
Monday, May 23, 2016	Distribution of SOW to DIR Vendors
May 23 – June 1, 2016	Open period for questions
Wednesday, June 1, 2016	Deadline for questions to TEA
Thursday, June 2, 2016	Addendum issued for responses to questions
Monday, June 6, 2016	Addendum issued for responses to questions
Friday, June 10, 2016	Response is due in the PCAS office by 2:00 p.m., CT
Tuesday, June 21, 2016	Response is due in the PCAS office by 2:00 p.m., CT
June 10 – 17, 2016	Response review, Evaluations, and Selection of Vendor
June 21, 2016 – July 8, 2016	Response review, Evaluations, and Selection of Vendor
Contract Award	Beginning date of contract and commencement of work
August 31, 2016	Ending date of Contract, final billing submitted to TEA

*It should be noted that all of these dates except the response due date might vary slightly as conditions require*

1. Is this SOW open to every Vendor or for Vendors in a certain category?  
**TEA Response:** The SOW was sent to several Department of Information Comprehensive Web Development and Management Services Vendors and posted to the Electronic State Business Daily.
  
2. Is the application (NGS) intended for all states' usage or just the state of Texas?  
**TEA Response:** **It is intended for Texas as the lead state along with the consortium states.**
  
3. Section 7.4 *SOW Response Format and Content*, paragraph 7.4 *References – Past Performances*, states "Vendor name, Point of contact with current..." should this read "Client" name?  
**TEA Response:** The word "Vendor" may be substituted for "Client".
  
4. Is this SOW associated with DIR's Comprehensive Web Development Contract or the DBITS Contract?  
**TEA Response:** Comprehensive Web Development.
  
5. Is TEA looking to develop a new system or for maintenance and support of the current system?  
**TEA Response:** Maintenance and support of the current system.
  
6. Section 9.3 *Tentative Sequence of Events/Critical Dates*, indicates the ending date of the contract is August 31, 2016. Is that the ending date of the initial term of the contract? Or the contract as a whole?  
**TEA Response:** The initial contract term ends August 31, 2016 with the option to renew for up to four additional fiscal years (September 1 – August 31).
  
7. Who is the current Vendor providing the services described in this SOW? How many hours have been spent in the past 12 months or on an annual basis to maintain and support the NGS Application?  
**TEA Response:** Northrop Grumman is the current Vendor and the estimated annual amount is \$677,000.00.

**SOW #701-16-028**  
**Comprehensive Web Development for New Generation System (NGS)**  
**Addendum 1**

8. In reference to SOW #701-16-46 Managed Services and Data Storage for NGS, it appears one solicitation is for Maintenance and Support, and the other is for Database Maintenance and support, what is the reasoning for splitting into two?

**TEA Response:** SOW #701-16-028, Comprehensive Web Development for New Generation System and SOW #701-16-046, Managed Services and Data Storage for new Generation System were split as advised by the Department of Information Resources.

9. Can you share more information or a link regarding the Migration Education Program and the TEA NGS Data Management Requirements?

**TEA Response:** <http://ngsmigrant.com/> and <http://tea.texas.gov/Title/PartC/Migrant/>

10. What is the project's projected start date? Does this include a Phase Out period?

**TEA Response:** The projected start date is July 11, 2016 or from contract award, and there is a phase out period included.

11. Is <https://ngsmigrant.com/> the current location for the platform that this contract will continue to revise and improve? If so, will the contract personnel take this site and underlying database over, or construct something new? Who owns the rights to this site?

**TEA Response:** Yes, the contract personnel will take this site and underlying database. TEA owns the rights.

12. Can TEA provide specifics about the current solution being used – including Database Management System, CMS – and tell what aspects of it TEA wants to improve?

**TEA Response:** The information is not available from the Program staff.

13. Does TEA desire to completely change any aspects of the solution being used, including Database Management System? If so, does TEA prefer an open source or proprietary solution?

**TEA Response:** Maintenance and support of the current system is desired, but TEA is open to suggestions.

14. Is there an incumbent? Who is it and what is the value and period of performance of their contract?

**TEA Response:** Yes, Northrop Grumman and the period of performance is September 1, 2013 – August 31, 2016.

15. Please describe the interoperability requirements between this solution and others (including the national-level MSIX, the NGS Consortium of States, and migrant education programs for other states)?

**TEA Response:** All are aligned as New Generation System (NGS) feeds into Migrant Student Information Exchange (MSIX).

16. Can Respondents submit Federal CPARS (Contractor Performance Award System) records, rather than references, for past government work? (Because of federal government stipulations, it can be difficult for federal government customers to answer questions about contractor performance.

**TEA Response:** Respondent's must provide at least two applicable project experiences and at least two customer reference contacts.

17. Please clarify Evaluation Criterion, Item C, number 2, "Quality of Management Component", what kind of research/evaluation skills would be desirable in the Project Manager, System Administrator, or Programmers?

**SOW #701-16-028**  
**Comprehensive Web Development for New Generation System (NGS)**  
**Addendum 1**

**TEA Response:** Refer to Section 7.3 Personnel Resources.

18. Will TEA provide the development environment as well?

**TEA Response:** The information is not available from the Program staff.

19. Regarding Section 4.1 *Transition Period*, this reads like it applies to phase-out of the new Contractor at the end. Presume there is also a similar clause for the incumbent to provide Phase-Out Support to the new awardee for four weeks?

**TEA Response:** Refer to the last paragraph on the Section.

20. Regarding the requirement for references, where do they count in the matrix and what is the value for each reference?

**TEA Response:** The criteria for proposal scoring is outlined in Section 9.8 *Review of Responses*.

21. Pricing Proposal, Attachment C, and first line, "Vendor shall designate a firm, fixed cost for the NGS Comprehensive Web Development. The Vendor shall", are words missing at the end of this line?

**TEA Response:** No, a semi-colon is missing.

22. Where is the current solution hosted and what type of access will the Vendor have?

**TEA Response:** The current solution is hosted by TEA and the awarded Vendor will have full access.

23. Does the system need to go through any Security Assessments for compliance purposes?

**TEA Response:** Yes.

24. What technical documentation on the current system can you give?

**TEA Response:** Not available.

25. How many users are expected for the Help Desk system?

**TEA Response:** Approximately twenty education service centers, four hundred local education agencies and some migrant families.

**SOW #701-16-028**  
**Comprehensive Web Development for New Generation System (NGS)**  
**Addendum 2**

Section 4. *Additional TEA Terms and Conditions*, paragraph three is changed as follows:

“The term of any Contract resulting from this SOW shall be from Contract award through August 31, ~~2016~~ **2017**. TEA, at its own discretion, may extend any Contract awarded pursuant to this SOW for up to four additional fiscal years under the terms subject to appropriation of funds by the United States Department of Education (USDE) and dependent on the Vendor’s active Comprehensive Web Development and Management Services contract with the Department of Information Resources (DIR).”

Section 6.4 *Response Checklist*, is corrected as follows:

The checklist is to assist Vendors in ensuring that all information is included in their response. Vendors must refer to the appropriate section of the SOW for detailed information on the following.

- |                          |   |   |
|--------------------------|---|---|
| <input type="checkbox"/> | Response Cover Page                               | Sec. <del>7.3</del> <b>6.3</b> , Attachment A |
| <input type="checkbox"/> | Execution of Offer, Contract Terms and Conditions | Attachment B                                  |
| <input type="checkbox"/> | Understanding of the Project and Methodology      | Sec. <del>8.1</del> <b>7.1</b>                |
| <input type="checkbox"/> | Subcontracts                                      | Sec. <del>8.2</del> <b>7.2</b>                |
| <input type="checkbox"/> | Personnel Resources                               | Sec. <del>8.3</del> <b>7.3</b>                |
| <input type="checkbox"/> | References – Past Performance                     | Sec. <del>8.4</del> <b>7.4</b>                |
| <input type="checkbox"/> | Access to Confidential Information                | Sec. <del>8.5</del> <b>7.5</b> Attachment D   |
| <input type="checkbox"/> | Pricing Proposal                                  | Sec. <del>9</del> <b>8</b> , Attachment C     |

**Failure to return all information on the checklist may disqualify the response.**

Section 8. *Pricing*, is changed as follows:

“The Pricing Proposal, Attachment C, must be submitted separately from the SOW and include a detailed budget for each fiscal year through August 31, ~~2020~~ **2021**. Vendors must list in their pricing proposals all assumptions used to compile the prices given for the project. TEA reserves the right to award to one or more Vendors as a result of this SOW. Failure to meet these conditions shall result in disqualification of response and shall receive no further consideration.”

The SOW timeline is changed as follows:

**9.3 Tentative Sequence of Events/Critical Dates**

Date	Event
Monday, May 23, 2016	Distribution of SOW to DIR Vendors
May 23 – June 1, 2016	Open period for questions
Wednesday, June 1, 2016	Deadline for questions to TEA
<del>Thursday, June 2, 2016</del>	<del>Addendum issued for responses to questions</del>
Monday, June 6, 2016	Addendum issued for responses to questions
<del>Friday, June 10, 2016</del>	<del>Response is due in the PCAS office by 2:00 p.m., CT</del>
Tuesday, June 21, 2016	Response is due in the PCAS office by 2:00 p.m., CT
<del>June 10 – 17, 2016</del>	<del>Response review, Evaluations, and Selection of Vendor</del>
June 21, 2016 – July 8, 2016	Response review, Evaluations, and Selection of Vendor
Contract Award	Beginning date of contract and commencement of work
<del>August 31, 2016</del>	<del>Ending date of Contract, final billing submitted to TEA</del>
August 31, 2017	Ending date of Contract, final billing submitted to TEA

*It should be noted that all of these dates except the response due date might vary slightly as conditions require*

Previous question/TEA response corrected as follows:

- How much has been spent on an annual basis to maintain and support the NGS Application?

**TEA Response:** The estimated annual amount is ~~\$677,000.00~~ \$700,000.00.